

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. On December 7, 2005 the petitioner's MA/LCMHC psychotherapist completed an OVHA "medical need form" in support of coverage for dentures for the petitioner. On the

form the psychotherapist described the following "extenuating circumstances":

My patient was referred for psychotherapy by her M.D. at the (facility) where she was hospitalized for severe depression and suicidal ideology (sic). In addition to being a painful condition that triggers bouts of depression in my patient, her unsightly, rotting teeth diminish her self-esteem and ability to relate positively in social situations, a situation that also contributes to her depressed mood and feelings of unworthiness.

3. On January 22, 2006, the petitioner's M.D. submitted a similar form, which he filled out as follows:

History of multiple dental infections. Multiple carious teeth with potential for impaired nutrition. My medical records do not include details of her dental evaluation, x-rays, etc. I have occasionally prescribed antibiotics for this problem.

4. On March 6, 2006, OVHA denied the petitioner's request for M108 coverage for dentures, concluding that the above reports did not demonstrate that her condition was unique, that serious detrimental health would occur if she did not have dentures, or that appropriate alternative forms of treatment were not available.

5. Following the petitioner's appeal, her health care providers submitted additional statements in her behalf. In a letter dated April 28, 2006, the petitioner's psychotherapist wrote:

Dentures are often seen as purely a cosmetic procedure and therefore medically unnecessary. However, as a holistic mind/body practitioner, I would like to point out that there is a growing recognition among dentists and physicians that dental health has a tremendous impact on the overall health of the body. There is European research available that estimates that perhaps as much as half of all chronic degenerative illness can be linked either directly or indirectly to dental problems. Dental infections can cause pain, dysfunctional and systemic disease throughout the body as toxins leak out and depress the functioning of the physical immune system.

Just as it makes sense to take care of existing infections under and around decaying teeth and removing dying teeth, it makes sense to provide an individual with a comfortable functional and esthetic prosthetic replacement for teeth that must be extracted. A beautiful smile is not only a joy to behold, but would have a significant effect on my client's self esteem, whose currently badly rotten teeth impact on her ability to relate with confidence in social situations and contribute to her bouts of depression (sic).

I am asking that you authorize Medicaid coverage for dentures for my client.

6. On May 4, 2006, the petitioner's doctor submitted the following:

[Petitioner] has requested that I be in touch with you about ongoing concerns that I have noted as her primary care physician about recurring dental infections and the need for appropriate dental intervention to resolve these. She has had numerous courses of antibiotics prescribed from here to try to deal with these dental infections, but there is a limited amount that can be accomplished with antibiotics, and recurring use of them becomes increasingly non-productive. To the best of her understanding of the situation, she will require multiple extractions to bring the situation fully under control.

Financial considerations have made it difficult for her to complete this and if there are means of assisting her with this under programs that she is otherwise eligible for, it will certainly be in the interest of her long-term health to bring these infections under better control.

7. In a reconsidered decision, dated May 9, 2006, OVHA concluded, in effect, that the petitioner's dental infections could be treated through tooth extractions, which are covered under Medicaid (subject to a \$475 annual limit, see *infra*). It also concluded that the petitioner had not shown that a serious deterioration in her physical or mental health would likely occur if she could not obtain dentures.

8. Regarding the petitioner's *physical* health, based on the above reports it cannot be concluded that the Department abused its discretion in determining that the petitioner could effectively alleviate her pain and infections by having the affected teeth removed; and that she would be unlikely to suffer any serious health consequences if she then had to make modifications to her diet to allow for any resulting inability to chew food.

9. Although the evidence regarding her *mental* health is more problematic, it must similarly be concluded that the above statements submitted by the psychotherapist do not conclusively establish that the petitioner's mental health is

likely to *deteriorate* (as opposed to fail to improve) without dentures. It appears that the petitioner is presently receiving effective and appropriate mental health services. There is no indication that the petitioner is presently in crisis, or that the lack of dentures (as opposed to effective treatment of her dental pain and infection) makes it any more likely that her mental health will significantly deteriorate in the future.

ORDER

The Department's decision is affirmed.

REASONS

As a cost-saving measure, the state has eliminated coverage of dentures for all adult Medicaid beneficiaries. W.A.M. § M621.6. However, OVHA has a procedure for requesting exceptions to its non-coverage, which requires the recipient to provide information about her situation and supporting documentation. M108. OVHA must then review the information in relation to a number of criteria as set forth below:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?

2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service or item solely based on its cost.
6. Is the service or item experimental or investigational?
7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within the discretion of the Department and will not be overturned unless OVHA has clearly abused its discretion by either failing to consider and address all of the pertinent medical

evidence under each criterion set forth above or by reaching a result that cannot be reasonably supported by the evidence. See, e.g., Fair Hearing No. 17,547.

The Board has also recognized the importance in M108 cases of distinguishing between physical and mental health issues. In this regard the Board has specifically ruled that as a general matter neither an inability to chew food nor problems with self-esteem and the ability to interact socially are "unique" medical problems sufficient to establish "extenuating circumstances" for dentures within the meaning of the above provisions. See Fair Hearing Nos. 19,989 and 19,425.

In this case, there is no evidence that simply removing the petitioner's infected teeth will not satisfactorily resolve her ongoing problems with dental pain and infection. Tooth extractions are a covered dental service under Medicaid (W.A.M. § M621.3), although such services are limited to an annual monetary cap of \$475 (§ M621.4). In Fair Hearing No. 19,989 the Board upheld the Department's denial of an M108 exception for dentures in a case where the petitioner did not demonstrate that the lack of teeth would likely result in serious detrimental health consequences given the availability and appropriateness of alternative means of

maintaining proper nutrition (i.e., eating pureed food). In the instant case, the evidence submitted by the petitioner's medical providers does not establish that, once her infected teeth are removed, dentures would be required to maintain her *physical* health.¹

As noted above, however, the questions surrounding the petitioner's mental health are more complex. In Fair Hearing No. 19,425, the Board reversed the Department's denial of an M108 exception based on uncontroverted medical evidence in that case that "dental malformations from early childhood were a focus of harassment by peers and make dental issues an emotional trigger", and that the petitioner in that case "will fall into a depressive state due to lack of front teeth" (emphasis added). In that case, the petitioner's dentist and medical doctor specifically agreed with that assessment. Although it may appear to be an unduly harsh exercise in hair splitting, it cannot be concluded that the

¹ Although this begs the question of whether the \$475 annual cap on dental services is sufficient to enable the petitioner to avail herself of the dental surgery that the Department appears to concede is medically necessary, it appears that the Department has already determined that the petitioner would be eligible for General Assistance (GA) coverage to make up the difference. (See letter from atty. Brierre dated June 14, 2006.) This concession by the Department appears to comport with a prior ruling by the Board on this issue. See Fair Hearing No. 19,835. If the petitioner is denied GA under these circumstances, she is free to appeal that decision.

medical evidence submitted in the instant case demonstrates a similar uniqueness and likelihood of detrimental health consequences.

The petitioner's medical doctor in this case made no comment on her mental health. Besides also commenting on the petitioner's chronic dental pain and infections, the petitioner's psychotherapist has stated only that she believes the petitioner's confidence and self-esteem will improve if her infected teeth are removed and replaced with dentures. However, one could reasonably expect this to be the case with any individual that elects virtually any cosmetic procedure. Unfortunately, the M108 criteria (*supra*) require a significantly more dire prognosis. Based on the evidence that was submitted on the petitioner's behalf, it cannot be concluded that OVHA has abused its discretion in its assessment that the petitioner has not demonstrated that, once her infected teeth are removed, *either* her physical or mental health is likely to *worsen* significantly if she is not provided with dentures.² She is encouraged to show this decision to her medical providers so that they may better understand the legal standard for coverage of dentures, and

² The petitioner is free to reapply for an M108 exception for dentures if she can obtain such evidence.

specifically address those standards if they feel the petitioner meets them.

In light of the above, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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